Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on "EPA's Proposed Carbon Dioxide Regulations for Power Plants"
June 19, 2014

(As Prepared for Delivery)

This morning we will be discussing EPA's proposed regulations targeting carbon dioxide emissions from existing electric power plants. On June 2nd the long-anticipated carbon dioxide regulations for existing power plants were proposed.

This is the first opportunity Congress has had to hear directly from the agency exactly why it thinks it can issue this proposal, what it thinks the proposal should do, how the proposal will be implemented, and what it will accomplish. And I welcome our witness, Janet McCabe, EPA Acting Assistant Administrator for Air and Radiation, who has come to explain the rule and answer our initial questions today. This will not be our only opportunity to take testimony on the proposal or to hear from the agency. This is just the beginning of what we can assure to be a deliberate, careful oversight of the agency's regulatory action.

I have strong concerns at the outset that this proposal looks very similar to the cap and trade legislation the Obama Administration tried to ram through Congress in 2009. Now, the president is acting unilaterally in directing the EPA to set rules and regulations that are essentially unworkable and will not even have an impact on our future emissions of greenhouse gases or global temperatures. Former EPA Administrator Lisa Jackson confirmed this when she testified before this subcommittee and said "We will not ultimately be able to change the amount of CO2 that is accumulating in the atmosphere alone."

And, EPA Administrator Gina McCarthy also summed up the views of this administration when she testified before this subcommittee saying, that her agency (EPA) does not measure whether its regulations and the tens of billions of dollars spent by the administration will actually affect future climate change, it is simply part of an "overall strategy" to demonstrate global leadership. These actions are all in an effort to destroy coal as an energy source in America and become a "leader" in the international community.

Beyond the president's unwillingness to listen to the American people, this proposal raises serious policy and legal questions. This proposal is like nothing EPA has ever proposed before as a performance standard– even more so than any of the agency's controversial actions targeting the nation's coal-based electricity generators. Instead of calling on the states to establish a performance standard for units within the source category, it appears that EPA is dictating to the states the levels of emissions reductions that each state must make, in essence proposing to require states to alter the way in which their electric utility systems make power. And, in our experience with oversight of this agency, the proposed rule rarely changes significantly before it is finalized.

In its rollout of this proposal, the EPA has repeatedly emphasized the rule's "flexibility." What EPA describes as flexibility is really the agency giving itself arbitrary authority to regulate electricity generation and use as it sees fit. We don't know for certain what this proposal would require of Kentucky and other states, but we do know that EPA will make the final decisions in approving or denying each states implementation plans. Further, EPA has made clear in their proposal that "[o]nce the final goals have been promulgated, a state would no longer have an opportunity to request that the EPA adjust its CO2 goal." And all of this regulatory control would be coming from an agency that has no energy policy-setting authority whatsoever, no energy planning expertise, and no real accountability should things go badly for the citizens of these states.

The original Clean Air Act respected the appropriate role for state and local governments. In fact, the statute begins with the Congressional finding that air pollution prevention is the primary responsibility of state and local governments. This philosophy is also reflected in the language of section 111(d), which has previously been used by EPA in a very limited and deferential manner. But with this proposed rule,

EPA appears to be casting aside all precedent and expansively interpreting its authority under this section as a justification to force states to redesign their electricity systems.

Coal faces a devastating one-two punch from EPA. First, the proposed New Source Performance Standards for electric generating units have all but outlawed new and more efficient, state of the art coal fired-capacity. And with this new proposed rule, the agency can begin shuttering existing coal facilities. EPA implies that a coal unit can become six percent more efficient, but there are many doubts about the real world achievability of this figure. There are also doubts about EPA's assumptions that states can simply shift away from using that coal plant to using natural gas, nuclear or renewables, because many states such as Kentucky rely on coal to generate over 90 percent of our electricity and do not have an abundance of resources to rely on. But, if coal can no longer be a significant part of a diverse energy supply, it will be the customers and the business community who will feel the very serious implications that these regulations will have for electricity affordability and reliability.

There are a great many questions and concerns about this proposed rule. And, I said, today is only the subcommittee's first step in its examination of EPA's actions and of potential consequences of this Administration's plans. We look forward to the testimony of the Acting Assistant Administrator Janet McCabe and we hope to learn more about what this rule really means for our country.

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